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UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,433	08/25/2003	Walt Froloff	Emo2	4543

7590	02/17/2005

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EXAMINER
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ART UNIT	PAPER NUMBER
2173	

DATE MAILED: 02/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 August 2003*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Double Patenting

1.   The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-18 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-8, 10-11 and 15-18 of copending Application No. 09/563,624. This is a provisional double patenting rejection since the conflicting claims have not yet been patented. The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: selecting text displayed by the computer application; selecting an emotive state from a plurality of emotive states residing in a computer memory associated with said computer application; selecting an emotive intensity from a range of emotive intensities residing in a computer memory associated with said computer application, and mapping to a face glyph representative of the selected emotive state and associated emotive intensity, from a plurality of face glyphs residing in a computer memory associated with computer application,

whereby emotive state and associated emotive intensity is rendered by the display of

representative face glyph with the associated text in the computer application.

Furthermore, there is no apparent reason why applicant would be prevented from

presenting claims corresponding to those of the instant application in the other copending

application. See also MPEP § 804.

<div align="center">

Claim Rejections - 35 USC § 102

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2.   Claims 1-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Brush, II et al.

(US Patent No. 5,732,232).

Regarding claim 1, Brush, II discloses system and method of communicating emotive

content comprising emotive vectors with associated text embedded in electronic device [..the

GUI of a computer workstation can be used to display likeness of a face on a display device; see

col. 3, lines 38-48].

Regarding claim 2, Brush, II discloses comprising the encoding of emotive content

into standard computing device communication formats [..the expression of the control

dimension by way of representing positioning of the eyes and eye brows; see col. 4, lines 1-6].

Regarding claim 3, Brush, II discloses comprising the encoding of the emotive content

into textual communications [..the communication of these characters has been limited to text

only; see col. 4, lines 7-12].

Regarding claim 4, Brush, II discloses comprising the decoding of emotive content

in electronic communications bearing emotive vectors normalized to the communication's author

[..user interface reaction is that the facial representation depicts a mouth intensely frowning to

indicate the negative emotion; see col. 4, lines 50-56.]

Regarding claim 5, Brush, II discloses comprising parsing the emotive content into

tokens for presentation and display of face glyph emotive representations with associated textual

content on receiver computing device displays [..it can be implemented in the use of interactive

games, interactive commerce and display environment; see 5, lines 13-17]

Regarding claim 6, Brush, II discloses comprising the tokenizing of the of speech of

associated text and with the tokenized emotive content synthesizing author's intended meaning

text strings (see col. 4, lines 23-30).

Regarding claim 7, Brush, II discloses comprising the mapping of emotive intensity

numerical value into one or more word text describing the emotive intensity value in express

language which would qualify an associated emotive state with the intensity value (see col. 4,

lines 57-62 and figure 3).

Regarding claim 8, Brush, II discloses further comprising the scanning and tokenizing of

the embedded emotive content in the communications (see col. 3, lines 27-36).

Regarding claim 9, Brush, II discloses comprising parsing communications containing

the emotive content using emotive grammar productions to tokenize the emotive content in

textual communications (see col. 5, lines 1-7).

Regarding claim 10, Brush, II discloses comprising a method of encoding emotive

vectors normalized to the author with associated text in electronic communications (see col. 4,

lines 22-41).

Regarding claim 11, Brush, II discloses further comprising structuring and synthesizing

emotive parsers with productions exploiting emotive vectors encoded in textual datastreams (see

figures 1 and 4).

As claims 12-16 are analyzed as previously discussed with respected to claims 1-11

above.

Regarding claims 17 and 18 , Brush, II discloses a computer network comprising a

plurality of computing devices connected by a network; said computing devices which display

graphical and textual output, applications executing on the devices embedding emotive vectors

which are representations of emotive states with associated author normalized emotive intensity,

assembling emotive content by associating emotive vectors with associated text in electronic

communication [.. VRML environment and Microsoft comic chat; see col. 4, lines 13-41;

encoding emotive content by preserving association of emotive vectors with associated text in

the electronic communication, transmitting the communication with emotive content to one or

more receiver computing devices, parsing communication bearing emotive content; [..identifying

x, y coordinates wherein each coordinate corresponds to a distance aspect of emotion; see col. 5,

lines 20-25]; and mapping emotive vectors to face glyph representations from a set of face

glyphs, such that communications encoded with emotive content facilitate exchange of precise

emotive intelligence [emotion display on the circumplex theory of interpersonal relationships;

see col. 5, lines 40-43]; displaying communication of textual with associated face glyph emotive

representations on said computing device displays; whereby senders can transmit to receivers precise emotive content in communications [..for selecting a point on the x, y plane to indicate the desire emotion; see col. 6, lines 13-20].
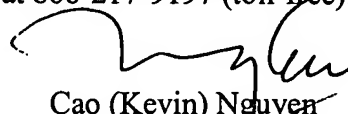
Conclusion

3.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. (see PTO-892).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cao (Kevin) Nguyen whose telephone number is (571)272-4053. The examiner can normally be reached on 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cabeca can be reached on (571)272-4048. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Cao (Kevin) Nguyen
Primary Examiner
Art Unit 2173

02/15/05